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8 SYMANTEC CORPORATION

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 JAMES GROSS,

14 Plaintiff,

15 v.

16 SYMANTEC CORPORATION, et al.,

17 Defendants.

CASE NO.: C 12-00154 CRB

**SYMANTEC'S STATEMENT IN  
SUPPORT OF FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT  
AGREEMENT**

Date: October 4, 2013  
Time: 10:00 AM

1 Pursuant to the provisions of the Court’s May 28, 2013 order (ECF No. 70) granting  
2 preliminary approval to the parties’ class-wide settlement (“the Settlement”), defendant  
3 Symantec Corporation (“Symantec”) respectfully submits this Statement in Support of Final  
4 Approval of the Settlement. Symantec understands that Plaintiff is filing a comprehensive  
5 Motion for Final Approval of the Settlement that will address the various considerations for final  
6 approval in detail. Symantec will therefore be brief.

7 Courts consider several factors to determine whether a settlement is “fair, adequate, and  
8 reasonable,” including the strength of plaintiffs’ case; the risk, expense, complexity, and likely  
9 duration of further litigation; the risk of maintaining class action status throughout the trial; the  
10 amount offered in settlement; and the reaction of the class members to the proposed settlement.  
11 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citing *Hanlon v. Chrysler*  
12 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *Officers for Justice v. Civil Serv. Comm’n*, 688  
13 F.2d 615, 625 (9th Cir. 1982). The issue “is not whether the settlement could be better, but  
14 whether it is fair, reasonable, and adequate and free from collusion.” *Hanlon*, 150 F.3d at 1027.

15 Here, the factors weigh in favor of final approval. As reflected in Symantec’s multiple  
16 motions to dismiss the claims in this action, *see* ECF Nos. 28, 38, 51, Symantec has at all times  
17 maintained that this action lacks merit and has vigorously defended this case. Symantec  
18 successfully obtained withdrawal of Plaintiff’s original complaint and a dismissal by the Court of  
19 the First Amended Complaint. *See* ECF Nos. 32, 49. In its pending motion to dismiss the  
20 Second Amended Complaint, which has been fully briefed but stayed in light of the Settlement,  
21 Symantec explains why the current amended complaint should likewise be dismissed with  
22 prejudice. *See* ECF Nos. 51, 54. Faced with Symantec’s fully-briefed motion to dismiss and  
23 prior to the scheduled hearing on the motion, the parties agreed to attempt a resolution through  
24 professional mediation. During this second attempt at mediation,<sup>1</sup> Symantec agreed to settle this  
25 case to avoid the uncertainties, costs, and other negative impacts to its business of protracted  
26 litigation, notwithstanding its belief that Plaintiff’s claims lack merit. The Settlement provides  
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28 <sup>1</sup> An initial mediation conducted prior to the filing of this action was unsuccessful.

1 injunctive, monetary, in-kind, and *cy pres* benefits to the settlement class—remedies that  
2 Symantec respectfully submits the class would not have recovered if the litigation continued.<sup>2</sup>

3       There have been no objections to the Settlement from the class. And only six of the more  
4 than one million class members have decided to opt out of the Settlement. Given the lack of  
5 objection to the Settlement and the provision of benefits to class members, as weighed against  
6 the likelihood that Symantec would ultimately prevail on the merits of Plaintiff's claims, the  
7 Court should grant final approval of this fair, adequate, and reasonable Settlement.

8  
9 Dated: September 6, 2013

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

10 By: /s/ Maura L. Rees  
11 Maura L. Rees

12 *Attorneys for Defendant*  
13 SYMANTEC CORPORATION  
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26 <sup>2</sup> On August 6, 2013, the parties jointly filed a list of six organizations eligible to receive a *cy*  
27 *pres* distribution from the Settlement under the criteria set forth by the Ninth Circuit in *Lane v.*  
28 *Facebook, Inc.*, 696 F.3d 811 (9th Cir. 2012). *See* ECF No. 72. Three of the organizations were  
proposed by Plaintiff and three by Symantec. The parties have left it to the Court's discretion to  
determine which of these proposed recipients will receive a share of any *cy pres* distribution  
under Section XI.C of the Settlement. *See id.* at 2.